

AARON J. MOSS (SBN 190625)
Aaron.Moss@msk.com
JOSHUA M. GELLER (SBN 295412)
Josh.Geller@msk.com
HANNAH G. SHEPHERD (SBN 347611)
Hannah.Shepherd@msk.com
MITCHELL SILBERBERG & KNUPP LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067-3120
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for Defendant Riot Games, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARC WOLSTENHOLME,
Plaintiff,
v.
RIOT GAMES, INC.,
Defendant.

Case No. 2:25-cv-00053-FMO-BFM

Hon. Fernando M. Olguin

**RIOT GAMES, INC.'S NOTICE OF
MOTION AND MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

[Declaration of Joshua Geller and
[Proposed] Order filed concurrently
herewith]

Date: May 8, 2025
Time: 10:00 am
Crtrm: 6D

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 8, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 6D of the above-entitled Court, located at 350 W. 1st Street, 6th Floor, Los Angeles, CA 90012, Defendant Riot Games, Inc. (“Riot”) will, and hereby does, move to dismiss Plaintiff Marc Wolstenholme’s (“Wolstenholme”) Second Amended Complaint (“SAC”) with prejudice for failure to comply with the pleading requirements of Fed. R. Civ. Pro. 8 and for failure to state a claim pursuant to Fed. R. Civ. Pro. 12(b)(6).

The SAC does not contain a “short and plain statement” of Wolstenholme’s claims for relief; to the contrary, it is more than 1,200 pages long and is replete with irrelevancies, legal argument, and other improper material. It therefore violates Rule 8’s pleading standard and should be dismissed.

The SAC also does not allege a plausible claim for relief as to any of its four causes of action. As to its two copyright claims, it fails to plausibly allege (i) that Riot had access to Wolstenholme’s purported work(s), or (ii) that Riot unlawfully appropriated any protected expression in Wolstenholme’s purported work(s). As to its unfair competition claim, that claim is preempted by the Copyright Act. As to its claim for intentional infliction of emotional distress, the claim is time-barred and barred by the litigation privilege, and the alleged conduct is not sufficiently extreme and outrageous to state the claim as a matter of law.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declaration of Joshua Geller, any reply papers that may be filed, and on such further oral or documentary evidence as may be presented at or before the hearing on this matter.

The motion is made following a conference between counsel and Wolstenholme, who is representing himself *pro se*, pursuant to Local Rule 7-3,

1 which took place by email correspondence on January 26, 2025, after which
2 Wolstenholme refused to meet and confer further.

3
4 DATED: April 4, 2025

MITCHELL SILBERBERG & KNUPP LLP

5
6 By:



7 AARON J. MOSS (SBN 190625)
8 JOSHUA M. GELLER (SBN 295412)
9 HANNAH G. SHEPHERD (SBN 347611)
10 Attorneys for Defendant Riot Games, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a frivolous copyright case brought by a *pro se* plaintiff who has now filed three pleadings, each of which has failed to state a plausible claim for relief. Dkts. 1, 11, and 58. The subject of this motion is a sprawling 1,220-page Second Amended Complaint (“SAC”) that unmistakably confirms that Plaintiff Marc Wolstenholme (“Wolstenholme”) has no viable claims. Dkt. 58. The SAC is unintelligible and grossly violates Rule 8’s requirement that pleadings contain “a short and plain statement” of the claim. It should be dismissed as an unfair drain on the resources of both this Court and Defendant Riot Games, Inc. (“Riot”). [*Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 \(9th Cir. 2011\)](#) (“Rule 8(a) has ‘been held to be violated by a pleading that was needlessly long, or a complaint that was highly repetitious, or confused, or consisted of incomprehensible rambling.’”).

The SAC is not only defective in form, but also fails on the merits. Wolstenholme purports to assert four claims: direct copyright infringement, vicarious copyright infringement, unfair competition, and intentional infliction of emotional distress. The latter two are quickly disposed of—his unfair competition claim is preempted by the Copyright Act; his IIED claim is barred by the statute of limitations, the litigation privilege, and otherwise fails to state a claim.

As to the copyright claims, Wolstenholme’s SAC can broadly be divided into two unequal portions: The first 11 pages before the Prayer for Relief (what would traditionally be “the complaint”) are conclusory and vague and fail to satisfy basic pleading standards under *Iqbal/Twombly*. The remaining 1,209 pages are impossible to follow and further confirm that Wolstenholme cannot plausibly allege access or substantial similarity of protected expression and therefore *cannot* state a claim.

1 First, Wolstenholme fails to plausibly allege that anyone involved in the
2 creative development of *Arcane*—Riot’s Emmy-award winning animated
3 television series¹ at issue in this case—ever had access to his manuscript. His
4 allegations fall far short of the “reasonable possibility” standard required to
5 establish access. Nor can he allege any widespread dissemination of his
6 manuscript sufficient to raise an inference of access.

7 Second, his allegations of substantial similarity rely exclusively on
8 unprotectable ideas, generic themes, and random and scattered comparisons that
9 are neither similar nor protectable, as well as innumerable irrelevancies and
10 otherwise facially implausible theories.

11 Wolstenholme cannot state any cognizable claim for relief and his SAC
12 should therefore be dismissed with prejudice.

13 **II. LEGAL STANDARD**

14 [Federal Rule of Civil Procedure \(“FRCP”\) 8](#) requires a plaintiff to provide
15 “fair notice of what the claim is and the grounds on which it rests,” along with a
16 “short and plain statement” of the claims for relief. [Bell Atl. Corp. v. Twombly,](#)
17 [550 U.S. 544, 545 \(2007\)](#) (quotation and alteration omitted). Although a plaintiff
18 need not provide “detailed factual allegations,” he must provide “more than an
19 unadorned, the defendant-unlawfully-harmed-me accusation.” [Ashcroft v. Iqbal,](#)
20 [556 U.S. 662, 678 \(2009\)](#) (internal quotation marks omitted). “[A] plaintiff’s
21 obligation to provide the grounds of his entitlement to relief requires more than
22 labels and conclusions, and a formulaic recitation of the elements of a cause of
23 action will not do.” [Twombly, 550 U.S. at 555.](#)

24 A motion to dismiss under [FRCP 12\(b\)\(6\)](#) “tests the legal sufficiency of a
25 claim.” [Navarro v. Block, 250 F.3d 729, 732 \(9th Cir. 2001\).](#) Dismissal under
26 [FRCP 12\(b\)\(6\)](#) “is proper when the complaint either (1) lacks a cognizable legal

27 ¹ *Arcane* is based on Riot’s popular videogame *League of Legends*, which has been
28 one of the most played videogames in the world since its release in 2009.

theory or (2) fails to allege sufficient facts to support a cognizable legal theory.” [Somers v. Apple, Inc.](#), 729 F.3d 953, 959 (9th Cir. 2013). To survive dismissal, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” [Iqbal](#), 556 U.S. at 678.

While pleadings filed by *pro se* litigants are often interpreted liberally, “a *pro se* litigant is not excused from knowing the most basic pleading requirements.” [Am. Ass’n of Naturopathic Physicians v. Hayhurst](#), 227 F.3d 1104, 1107–08 (9th Cir. 2000), *as amended on denial of reh’g* (Nov. 1, 2000).

III. PROCEDURAL BACKGROUND

On October 31, 2024, Wolstenholme filed a complaint for copyright infringement, unfair competition, and intentional infliction of emotional distress in the Superior Court for the County of Los Angeles. Dkt. 1, Exh. A. Because federal courts have exclusive jurisdiction over copyright cases, Riot removed this action on January 3, 2025. Dkt. 1. The initial complaint consisted of a state-court form document, akin to a Civil Cover Sheet, with no narrative statement of Wolstenholme’s claims. Dkt. 1, Exh. A. Riot informed Wolstenholme of this defect, and when he failed to file an amended complaint, Riot filed a motion to dismiss under [FRCP 12\(b\)\(6\)](#) or, in the alternative, for a more definite statement under [FRCP 12\(e\)](#). Dkt. 7. In response, Wolstenholme filed a First Amended Complaint (“FAC”) on January 13, 2025. Dkt. 11.

The FAC did not plausibly allege any claims for relief, so Riot filed a motion to dismiss. Dkt. 19. As to its two copyright claims, the FAC failed to plausibly allege (i) that Wolstenholme had a registered copyright or was otherwise excepted from the registration requirement, (ii) that Riot had access to Wolstenholme’s purported work(s), or (iii) that Riot unlawfully appropriated any protected expression in Wolstenholme’s purported work(s). As to its unfair competition claim, that claim was preempted by the Copyright Act. As to its claim

1 for intentional infliction of emotional distress, the claim was time-barred and
2 barred by the litigation privilege, and the alleged conduct was not sufficiently
3 extreme and outrageous to state the claim as a matter of law.

4 Rather than oppose, Wolstenholme filed a motion for leave to file a Second
5 Amended Complaint (Dkt. 28) which the Court granted, noting the “extreme
6 liberality” with which the Ninth Circuit permits amendments. Dkt. 52.
7 Wolstenholme filed the operative SAC on February 23, 2025. Dkt. 58. That SAC
8 does not correct any of the defects identified in the FAC, necessitating the instant
9 motion.

10 **IV. THE SAC FAILS TO COMPLY WITH FED R. CIV. PRO. 8.**

11 FRCP 8(a) requires that an initial pleading contain “a short and plain
12 statement of the claim showing that the pleader is entitled to relief.”
13 Wolstenholme’s 1,220-page SAC does not come close to meeting that standard.
14 The SAC’s sprawling, rambling and conspiratorial allegations render the pleading
15 unintelligible.

16 Wolstenholme alleges in general terms that his unpublished manuscript
17 “Bloodborg: The Harvest” (“Bloodborg”) was infringed by Riot in connection with
18 Riot’s popular animated television series *Arcane*. In the preamble to the SAC,
19 Wolstenholme summarizes his claims as follows:

20 Defendant’s animated show and promotional materials
21 derive narrative elements, themes, scenes, chapter /
22 episode titles, aesthetics, trauma writing, central premise,
23 macro and micro details, actual writing converted to
24 visual mediums, expert skill depictions, distinct color
25 usage, deeply nuanced motifs and allegories, symbolism,
26 character arcs, character personalities and backstories,
27 and more, from Plaintiff’s copyrighted work.

28 . . .

This alleged misuse and monetization of Plaintiff’s
trauma and deep psychological exploration along with

1 three years of bad faith negotiations and prolonged
2 litigations, and malicious communications,
3 discrimination, intimidation and harassment via email
4 and other forms, alleged to have been sent by Riot
5 employees, Fortiche Production employees and the wider
6 toxic cultural climate they foster, is alleged to have
7 caused, and continues to cause further emotional-
8 psychological harm and suffering and financial burden on
9 the Plaintiff.

10 Dkt. 58 at p.3.

11 What follows is hundreds of pages of rambling discussions of supposed
12 “comparisons” between Bloodborg and *Arcane*, in which it is almost impossible to
13 understand what is being compared and for what purpose, along with references to
14 potential future claims, medical disclosures, theories of psychological injury, and
15 long passages of irrelevant or unintelligible text. It is impossible to summarize the
16 full scope of what is included, let alone to discern the precise legal and factual
17 claims Riot is expected to answer.

18 Courts in the Ninth Circuit routinely dismiss complaints that violate [Rule 8](#).
19 See [Bennett v. Jakubowski](#), 2023 WL 6519515, at *2 (E.D. Cal. Oct. 5, 2023)
20 (dismissing 75-page complaint); [Mackintosh v. Lyft, Inc.](#), 2019 WL 5682826, at *5
21 (E.D. Cal. Nov. 1, 2019), *report and recommendation adopted*, 2019 WL 6528953
22 (E.D. Cal. Dec. 4, 2019) (dismissing complaint in excess of 700 pages). As
23 explained in [McHenry v. Renne](#), 84 F.3d 1172, 1179 (9th Cir. 1996): “Prolix,
24 confusing complaints such as the ones plaintiffs filed in this case impose unfair
25 burdens on litigants and judges.” *Id.* As a consequence of the lengthy and
26 convoluted pleading style Wolstenholme has employed, both the Court and Riot
27 are unable to use the SAC to frame the issues in dispute and are forced to expend
28 significant time and resources to guess at exactly what Wolstenholme alleges.

1 For example, the SAC alludes to additional material that Wolstenholme
2 intends to add at some later date—it is impossible to know how much of this
3 Wolstenholme believes is already part of this case, and how much of it he intends
4 to try to assert later. Wolstenholme includes a section on “Potential Additional
5 Claims,” which include claims ranging from fraudulent misrepresentation and
6 inducement to disability discrimination and retaliation to an “[a]ssortment of other
7 civil and criminal claims around the globe, predominantly in the UK and Europe,
8 including claims against Fortiche, claims of violations under The European
9 Convention on Human Rights (ECHR) and criminal proceedings.” Dkt. 58 at p.
10 12. It is impossible to know what is meant by any of these, or how they could
11 possibly apply to Riot.

12 The SAC also includes many pages of legal argument, making it impossible
13 to know what is intended to be a factual allegation and what is not. *E.g.*, Dkt. 58 at
14 pp. 233–235, 270–283 (section entitled “Complaint Argument,” which cites legal
15 theories including breach of implied contract / idea submission, violation of the
16 U.K. “passing off law,” wire fraud, and conspiracy to defraud under the U.K.
17 Fraud Act, among many others), 381–383, 404–407 (“This is more than a case of
18 intellectual property infringement, it is a multi-layered legal violation
19 encompassing fraud, misappropriation, defamation, and discrimination.”), 456–
20 457, 1022–1030.

21 The SAC includes an immense amount of obviously irrelevant material,
22 which even Wolstenholme at times acknowledges. For example, in a section
23 describing a scene in *Arcane* where characters are engaged in “fighting practice,”
24 Wolstenholme notes: “This is just to show the depth of the deceptive tactics; I will
25 not be relying on it in court.” Dkt. 58 at p. 214. Wolstenholme includes purported
26 excerpts from his own medical records (pp. 247–49), and lengthy discussions of
27 the link between post-traumatic stress disorder and insomnia (pp. 252–254) and

1 alleges that these “deeply personal experiences, intricately woven into Bloodborg,
2 were allegedly lifted and repurposed in *Arcane* without proper attribution” (p.
3 251). Wolstenholme “divulge[s] narrative secrets to the court” by referencing
4 material that appears on his “webpage,” but not (apparently) in his manuscript.
5 *E.g., id.* at p. 347. The SAC appears to contain nearly 400 pages of public
6 statements about the development of *Arcane*, none of which have any ostensible
7 connection to Wolstenholme’s claims. *Id.* at pp. 601–961. While there are too
8 many incomprehensible portions to list, the string of images and graphics at pages
9 974–994 are particularly indecipherable.

10 All told, this 1,220 page SAC is not capable of functioning as an operative
11 pleading. A complaint must set out the claims with some reasonable clarity so that
12 the Court and the parties can understand what issues are in dispute and what the
13 scope of discovery will be. Wolstenholme’s meandering and conspiratorial
14 musings do not satisfy that requirement. [Cafasso, 637 F.3d at 1059 \(9th Cir. 2011\)](#)
15 (“Rule 8(a) has ‘been held to be violated by a pleading that was needlessly long, or
16 a complaint that was highly repetitious, or confused, or consisted of
17 incomprehensible rambling.’ . . . Our district courts are busy enough without
18 having to penetrate a tome approaching the magnitude of *War and Peace* to discern
19 a plaintiff’s claims and allegations.”). Accordingly, Riot respectfully requests that
20 the case be dismissed. Moreover, given that this is Wolstenholme’s third attempt
21 to state a claim, and given the other insurmountable deficiencies in his allegations
22 described below, Riot requests that it be dismissed with prejudice.

23 **V. THE SAC FAILS TO STATE A CLAIM FOR DIRECT COPYRIGHT**
24 **INFRINGEMENT.**

25 “To state a claim for copyright infringement, [Wolstenholme] must plausibly
26 allege two things: (1) that [he] owns a valid copyright in [the works], and (2) that
27 [Defendants] copied protected aspects of [Wolstenholme’s works].” [Rentmeester](#)

1 [v. Nike, Inc.](#), 883 F.3d 1111, 1116–17 (9th Cir. 2018) (citations omitted). The
2 second prong has two distinct components: “copying” and “unlawful
3 appropriation.” [Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin](#), 952
4 [F.3d 1051, 1064 \(9th Cir. 2020\)](#). “In the absence of direct evidence of copying, . . .
5 the plaintiff can attempt to prove it circumstantially by showing that the defendant
6 had access to the plaintiff’s work and that the two works share similarities
7 probative of copying.” [Id.](#) (internal quotations and citation omitted). To prove
8 unlawful appropriation, the Ninth Circuit uses a two-part test consisting of a
9 subjective intrinsic test and an objective extrinsic test to determine whether the
10 defendant’s work is substantially similar to the plaintiff’s copyrighted
11 work. [Id.](#) “Both tests must be satisfied for the works to be deemed substantially
12 similar.” [Id.](#)

13 A. [Wolstenholme Fails to Plausibly Allege Access.](#)

14 In order to properly plead access in a copyright case, a plaintiff must
15 sufficiently allege “a reasonable possibility, not merely a bare possibility, that an
16 alleged infringer had the chance to view the protected work.” [Loomis v. Cornish](#),
17 [836 F.3d 991, 995 \(9th Cir. 2016\)](#) (internal quotation marks and citation omitted).
18 Access “may not be inferred through mere speculation or conjecture.” [Three Boys](#)
19 [Music Corp. v. Bolton](#), 212 F.3d 477, 482 (9th Cir. 2000). Courts within the
20 Central District routinely dismiss copyright infringement cases at the pleading
21 stage where a plaintiff’s access allegations are merely speculative. *See*
22 [Washington v. ViacomCBS, Inc.](#), 2020 WL 5823568, at *3 (C.D. Cal. Aug. 20,
23 2020); [Carlini v. Paramount Pictures Corp.](#), 2021 WL 911684, at *7 (C.D. Cal.
24 Feb. 2, 2021); [Fillmore v. Blumhouse Prods., LLC](#), 2017 WL 4708018, at *4 (C.D.
25 Cal. Jul. 7, 2017); [Schkeiban v. Cameron](#), 2012 WL 12895722, at *1–*2 (C.D. Cal.
26 May 10, 2012).

1 Wolstenholme’s allegations of “access” in the SAC are wholly insufficient.
2 Wolstenholme alleges that he submitted his manuscript to various “Literary, Film
3 and Gaming talent agencies,” and that he engaged in “wide dissemination via
4 email.” Dkt. 58, p. 29. He elaborates on these mechanisms in what he calls
5 “Exhibit B – Chronology of Wide Dissemination and Access of Bloodborg: The
6 Harvest,” contained at pages 46 through 89 of his SAC. He states that he
7 “[s]ubmitted Bloodborg to Riot via their online portal for submissions” on April
8 15, 2020. Dkt. 58, p. 48. Wolstenholme does not elaborate on what this “online
9 portal” supposedly was, and includes no evidence of such a submission. Even if
10 one were to credit this allegation, Wolstenholme is required to show a nexus
11 between “the individual who possesses knowledge of a plaintiff’s work and the
12 creator of the allegedly infringing work.” [*Meta-Film Assocs., Inc. v. MCA, Inc.*,
13 586 F. Supp. 1346, 1356–59 \(C.D. Cal. 1984\)](#). Notably, “[b]are corporate receipt .
14 . . without any allegation of a nexus between the recipients and the alleged
15 infringers, is insufficient to raise a triable issue of access.” [*Loomis*, 836 F.3d at
16 995–96](#) (a plaintiff “cannot create a triable issue of access merely by showing ‘bare
17 corporate receipt’ of her work by an individual who shares a common employer
18 with the alleged copier”). Wolstenholme’s conclusory statement that he submitted
19 Bloodborg through an unidentified “online portal,” without any specific nexus to
20 the creators of *Arcane*, cannot sustain a claim for copyright infringement.

21 Beyond that allegation, Wolstenholme includes a 10-page list of emails he
22 purportedly sent to various agents, publishers, and other unidentified individuals.
23 Dkt. 58, pp. 48–58. Wolstenholme does not allege any nexus between Riot and
24 any of these alleged recipients.

25 To the extent Wolstenholme intends this emailing campaign to be evidence
26 of “widespread dissemination,” he misapprehends the law. Widespread
27 dissemination as a mechanism for satisfying the access requirement “centers on the

1 degree of a work’s commercial success and on its distribution through radio,
2 television, and other relevant mediums.” [Loomis, 836 F.3d at 997](#). “Although the
3 Ninth Circuit has not identified a specific threshold for the level of public
4 engagement with a work that constitutes ‘wide dissemination,’ its precedent
5 indicates that a work’s degree of commercial success or notoriety must be
6 substantial.” [Woodland v. Hill, 2022 WL 19250191, at *3 \(C.D. Cal. Dec. 8,](#)
7 [2022\)](#). Importantly, “the mere availability of a work online is insufficient to
8 establish widespread dissemination.” [Lois v. Levin, 2022 WL 4351968, at *3](#)
9 [\(C.D. Cal. Sept. 16, 2022\)](#). “Put differently, that a work has the capacity to reach
10 anyone with an internet connection by virtue of its presence on the worldwide web
11 renders it merely possible, not reasonably possible, that the alleged infringer
12 viewed that work.” [Segal v. Segel, 2022 WL 198699, at *9 \(S.D. Cal. Jan. 21,](#)
13 [2022\)](#). Wolstenholme’s alleged email submissions to various third-party literary
14 agents cannot establish access as a matter of law.

15 Because Wolstenholme has no plausible allegation that anyone at Riot
16 involved in the creative development of *Arcane* ever had access to his work,² he
17 cannot state a claim for copyright infringement as a matter of law.

18 B. Wolstenholme Fails to Plausibly Allege Copying of Protected
19 Expression.

20 Wolstenholme’s claim for copyright infringement is also defective because
21 he fails to adequately allege that “the works at issue are substantially similar in
22 their protected elements.” [Zella v. E.W. Scripps Co., 529 F. Supp. 2d 1124, 1132–](#)
23 [1133 \(C.D. Cal. 2007\)](#) (citing [Cavalier v. Random House, Inc., 297 F.3d 815, 822](#)
24 [\(9th Cir. 2002\)](#)).

25
26 ² Should this case proceed past the pleading stage, Riot will be able to easily prove
27 that no one involved in creating *Arcane* ever saw or considered Wolstenholme’s
28 manuscript. Indeed, based on the description and excerpts of his manuscript in the
SAC, it is implausible that anyone would *want* to copy Wolstenholme’s
manuscript.

1 Wolstenholme has not attached a copy of his manuscript to the SAC.
2 Instead, in the first part of his SAC before the Prayer for Relief (i.e., the first 11
3 pages), he offers only conclusory statements “that characters, plotlines, thematic
4 elements, and narrative structure in ARCANE mirror those found in ‘Bloodborg:
5 The Harvest’” and that “the official music video ‘Blood Sweat & Tears’ by Riot
6 Games, featuring Sheryl Lee Ralph, derives directly from elements of ‘Bloodborg:
7 The Harvest.’” Dkt. 58 at pp. 5–6, ¶¶ 4–5. These conclusory statements do not
8 suffice to state a claim for copyright infringement. *See Esplanade Prods., Inc. v.*
9 *Walt Disney Co.*, 2017 WL 5635024, at *5 (C.D. Cal. July 11, 2017) (dismissing
10 complaint where plaintiff did not attach the allegedly infringed work, ruling that
11 “the Complaint is filled with conclusory allegations that are not factually specific
12 enough to support Esplanade’s claims”); *Evans v. McCoy-Harris*, 2019 WL
13 1002512, at *3 (C.D. Cal. Jan. 4, 2019) (dismissing complaint where plaintiff did
14 not attach allegedly infringed screenplay and did not allege the protectable
15 elements of the infringed works).

16 Past those initial 11 pages, Wolstenholme includes hundreds of pages of
17 meandering discussions analyzing his manuscript (Bloodborg) and Riot’s
18 television series (*Arcane*). These discursions confirm that Wolstenholme does not
19 understand what United States copyright law protects and is unable to state a claim
20 as a matter of law.

21 First and foremost, Wolstenholme does not include any clear articulation of
22 what, exactly, Bloodborg is about and how it supposedly compares to *Arcane*. He
23 does not identify the “articulable similarities between the plot, themes, dialogue,
24 mood, setting, pace, characters, and sequence of events” in the two works, as the
25 extrinsic test in the Ninth Circuit requires. *Funky Films, Inc. v. Time Warner Ent.*
26 *Co., L.P.*, 462 F.3d 1072, 1077 (9th Cir. 2006), *overruled on other grounds by*

1 [Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin, 952 F.3d 1051 \(9th](#)
2 [Cir. 2020\)](#).

3 Instead, he alternates between hyper-granular lists of “similarities” that are
4 unprotectable (e.g., two characters have a red hood, Dkt. 58, p. 137) or
5 overgeneralizations at such a high level of abstraction as to be irrelevant (both
6 works “feature protagonists who are struggling with internal conflicts and past
7 trauma,” p. 21). He describes how he has catalogued “over 100 instances of direct
8 infringements,” highlighting “character dynamics and origin stories,” “themes and
9 narrative frameworks” in *Arcane* that “mirror” those in his work, “psychological
10 and emotional states identical to those described in my manuscript,” as well as
11 copying of “proprietary trauma-based storytelling elements.” Dkt. 58, p. 997. By
12 framing the comparisons this way, Wolstenholme obfuscates the fact that the two
13 works have nothing protectable in common whatsoever.

14 For instance, Wolstenholme finds similarities in characters based on the fact
15 that “[b]oth characters are shaped by their relationships, particularly the loss of
16 their families, guilt and betrayal, and the weight of protecting those who remain.
17 . . . Trauma is central to both dynamics.” Dkt. 58, pp. 1002, 1004 (both characters
18 share “similarities in their trauma, resilience, loyalty, and fight against oppressive
19 forces,” but Bloodborg’s character has “layers of identity and technological
20 intrigue that make her distinct” from *Arcane*’s character). But such “[g]eneral plot
21 ideas,” like “the fact that both works involve a life struggle of kids fighting
22 insurmountable dangers, . . . are not protected by copyright law.” [Kouf v. Walt](#)
23 [Disney Pictures & Television, 16 F.3d 1042, 1045 \(9th Cir. 1994\)](#).

24 Under the most charitable reading of Wolstenholme’s SAC, he appears to
25 argue that both works involve “[t]he exploration of the blending of humans and
26 machines (cyborgs, advanced technology) with blood engineering to make
27 Bloodborgs,” in a “dystopian smog-filled setting marked by stark class divides,” in

1 which characters “struggl[e] with personal trauma” and engage in “rebellion and
2 resistance.” Dkt. 58, p. 24. Even if that were true of both works, this sort of
3 similarity in a story “[a]t a very high level of generality,” cannot support a claim of
4 infringement. [Berkic v. Crichton](#), 761 F.2d 1289, 1293 (9th Cir. 1985). “General
5 plot ideas are not protected by copyright law; they remain forever the common
6 property of artistic mankind.” *Id.* (finding two works not substantially similar
7 even though they both involved “criminal organizations that murder healthy young
8 people, then remove and sell their vital organs to wealthy people in need of organ
9 transplants”). This is all the more true when the level of generality includes
10 supposedly similar themes like: “War is bad”—a direct quotation from the SAC.
11 Dkt. 58, p. 226.

12 Wolstenholme also repeatedly highlights *dissimilarities* between the works
13 that undermine any of the comparisons he seeks to draw. Throughout his SAC, he
14 references a “clear pattern of repurposing from Bloodborg, where the original
15 material has been fragmented, reworded, and layered into *Arcane*’s script, creating
16 an illusion of originality while retaining the same core meaning and character
17 dynamics.” Dkt. 58, p. 287. Wolstenholme is, at most, alleging copying of
18 unprotectable ideas resulting in dissimilar expressive output. That is not actionable
19 copying. [Cavalier](#), 297 F.3d at 823 (“Copyright law only protects expression of
20 ideas, not the ideas themselves.”).

21 Beyond these stock concepts and highly generalized themes, Wolstenholme
22 focuses on the quintessential “random similarities scattered throughout the works”
23 that the Ninth Circuit has held are insufficient to sustain a claim of infringement.
24 [Litchfield v. Spielberg](#), 736 F.2d 1352, 1356 (9th Cir. 1984). Nearly every page of
25 the SAC is replete with these comparisons of minutiae—and even if they *could*
26 state a claim, the specific similarities are all facially non-protectable, non-original,
27 and not even similar in the first place. There are far too many to list given the

length of the SAC, but the following examples sufficiently demonstrate how far off the mark Wolstenholme's comparisons are:

- Episode 3 of *Arcane* is titled "The Base Violence Necessary for Change" and Bloodborg has dialogue that states "killing is necessary." Dkt. 58 at pp. 239–242.
- In *Arcane* "we see Silco's Goons making weapons, preparing for war," and in "Bloodborg, war or battle perpetrations [sic] are also taking place." *Id.* at p. 306.
- In *Arcane*, a character says "I'm on it" and in Bloodborg, a character says "I'm on it like boom sonic." *Id.* at pp. 343–344 (Per the SAC: "Key Difference: *Arcane* keeps it short and military-like, while Bloodborg adds slang and energy with 'like boom sonic.'").
- Wolstenholme highlights *Arcane*'s "trauma narrative," including the fact that *Arcane* shows traumatic flashbacks, which he contends were inspired by his own personal trauma. *See, e.g., id.* at pp. 479–481 ("If Bloodborg's trauma writing techniques are shown, in court, to be unique to the Plaintiff's experiences and creative process, then *Arcane* has crossed a legal and ethical boundary, one that will need to be scrutinized in criminal courts.").
- Wolstenholme claims that an *Arcane* character's "eye" was "inspired by the Eye of Sauron (Mordor) from The Lord of the Rings" (not Bloodborg), which he claims "shows a propensity to borrow and swipe stuff." *Id.* at pp. 516–517.
- Both works purportedly include "items hanging from wires" in completely different contexts. The discussion of this non-similarity spans more than ten pages. *Id.* at pp. 533–545.
- Wolstenholme compares graffiti-art of a smiling monkey face in *Arcane* with graffiti in Bloodborg showing "an army of blue gorillas wearing gas masks and armed with broomsticks." *Id.* at pp. 559–568.
- Bloodborg has a character who is "a complex father figure" while *Arcane* has a "repeated loss of father figures." *Id.* at p. 972.

Wolstenholme frequently includes comparison charts that, on their face, show a lack of similarity in whatever he intends to compare.

ELEMENT	ARCANE – SILCO & ZAUN	BLOODBORG – COWBOY MOMAHAN & NEW KOWLOON
GOAL	Create an independent nation of Zaun	Become the first King of New Kowloon
METHOD	Political manipulation, military control, drug trade	Violence, gang unification, blood harvesting
LEADER’S VISION	Freedom from Piltover’s rule, self-governance	Dictatorship over all rival factions
MEANS OF CONTROL	Shimmer (mutant drug), alliances, ideological loyalty	Blood-based drugs, forced recruitment, warfare

ELEMENT	ARCANE – VI & POWDER	BLOODBORG – ROOK & MATTEO/MAC
OLDER SIBLING ROLE	Vi protects Powder, sees her as too weak for combat	Rook protects her brothers, refusing to let them join her
KEY PHRASE	“You’re not ready.”	“You wouldn’t keep up.”
REASON FOR FLARE	Vi gives Powder a flare to protect her and promise to return	Rook is given flares to avoid signal tracking and for emergencies
SYMBOLISM OF THE FLARE	Represents a sisterly bond and a promise	Represents tactical survival and reconnection if needed
EVENTUAL USE OF FLARE	Powder/Jinx later lights it up to call Vi	No mention of Rook using the flare in this excerpt

ELEMENT	ARCANE – BENZO & SILCO	BLOODBORG – BILL REWAN & CHRIS
ROLE IN STORY	Shopkeeper, supplier, third brother-in-arms	Military Quartermaster (QM), logistics officer, key veteran figure
CONNECTION TO THE BETRAYAL	Vander betrays Silco, leaving him for dead	Dillon James unknowingly injures Chris & Bill in “The Rupture”
PHYSICAL INJURY	Silco’s eye is damaged, forcing him to inject a serum	Bill’s eye dangles from its socket, leading to his reliance on bionic acid
AFTERMATH OF BETRAYAL	Silco becomes Zaun’s dictator, addicted to injections	Bill is broken but remains a supplier and veteran, Cowboy takes this role.

See Dkt. 58, pp. 323, 335, and 341.

Wolstenholme also alleges that there are hidden references in *Arcane* to him personally. While these allegations would not have any bearing on a substantial similarity inquiry, they are indicative of the troubling delusion that permeates the

SAC. Wolstenholme shows images from *Arcane* that he thinks embed his initials, “M.W.”, as a sort of “hidden message”—in actuality, those initials do not appear anywhere. See Dkt. 58, pp. 386–402 (explaining that he believes his initials have been embedded in the program “to mock” him); see also pp. 488–489, 532.³

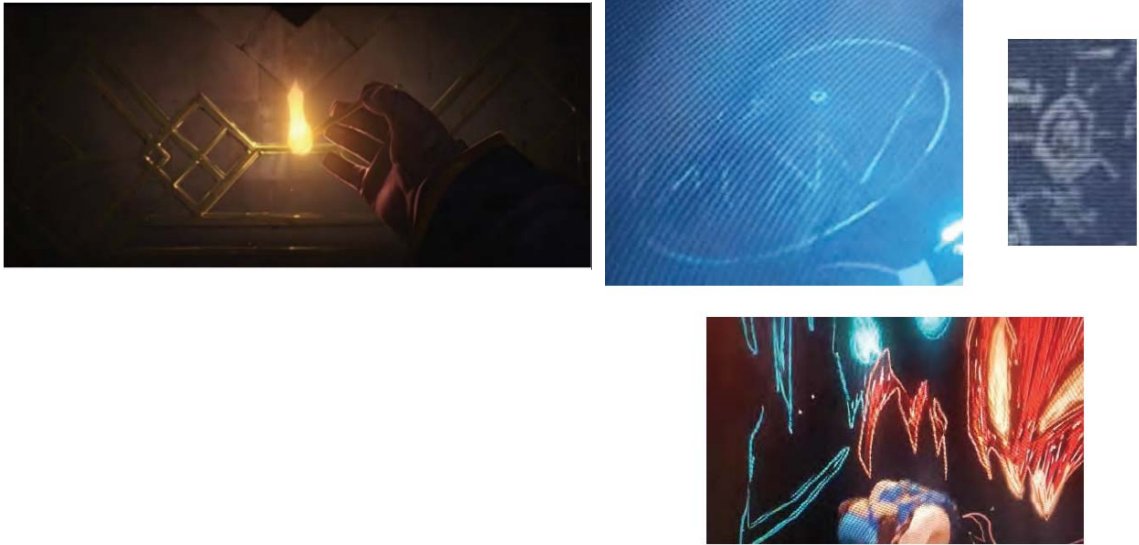


Exhibit F-Trauma Gaslighting



Look at all the M.Ws in these single frames.

³ Needless to say, this allegation is false.

1 Even interpreting the allegations of the SAC liberally and accepting all well-
2 pleaded facts as true, the reality is unmistakable: there is no similarity of protected
3 expression whatsoever between Bloodborg and *Arcane*. Wolstenholme’s account
4 of the “similarities” between the works is focused entirely on unprotectable ideas,
5 irrelevancies, and imagined or contrived similarities. This is a frivolous case, and
6 Wolstenholme should not be permitted to continue to drain the resources of Riot
7 and this Court.

8 **VI. THE SAC FAILS TO STATE A CLAIM FOR VICARIOUS**
9 **COPYRIGHT INFRINGEMENT.**

10 Wolstenholme also alleges a cause of action for “vicarious copyright
11 infringement.” Dkt. 58, p. 7, ¶¶ 4–6. “To state a claim for vicarious copyright
12 infringement, a plaintiff must allege that the defendant has (1) the right and ability
13 to supervise the infringing conduct and (2) a direct financial interest in the
14 infringing activity.” [Perfect 10, Inc. v. Visa Int’l Serv. Ass’n](#), 494 F.3d 788, 802
15 (9th Cir. 2007). “A plaintiff must therefore plausibly plead the predicate claim for
16 direct infringement in order to survive a motion to dismiss his vicarious
17 infringement claim.” [Al-Bustani v. Alger](#), No. C22-5238JLR, 2023 WL 3120747,
18 at *2 (W.D. Wash. Apr. 27, 2023) (citing [Metro-Goldwyn-Mayer Studios Inc. v.](#)
19 [Grokster, Ltd.](#), 545 U.S. 913, 930 (2005)).

20 Wolstenholme has not alleged any predicate claim for direct infringement.
21 As discussed above, Wolstenholme has not alleged any copying of protected
22 expression and therefore cannot state a claim for direct infringement as to anyone.
23 In addition, Wolstenholme does not even attempt to allege the specific elements of
24 vicarious liability. The SAC alleges the legal conclusions that Riot “benefited
25 financially from the unauthorized use of Plaintiff’s copyright material through
26 partnerships with Netflix, Fortiche Productions SAS, and others,” but does not
27 specify how. Dkt. 58, p. 7, ¶ 4. It then states that “Defendant had the ability to

1 control and supervise the infringing conduct but failed to prevent it,” again without
2 any factual allegations as to how. *Id.* ¶ 5. These bare legal conclusions cannot
3 sustain a claim for vicarious copyright infringement. *See, e.g., Luvdarts, LLC v.*
4 *AT&T Mobility, LLC*, 710 F.3d 1068, 1072 (9th Cir. 2013). Like the direct
5 infringement claim, this claim must be dismissed with prejudice.

6 **VII. THE SAC FAILS TO STATE A CLAIM FOR UNFAIR**
7 **COMPETITION UNDER CAL. BUS. CODE § 17200.**

8 Wolstenholme’s state law claim for unfair competition is preempted by the
9 Copyright Act and should similarly be dismissed with prejudice. “A state law
10 cause of action is preempted by the Copyright Act if two elements are present.
11 First, the rights that a plaintiff asserts under state law must be ‘rights that are
12 equivalent’ to those protected by the Copyright Act. 17 U.S.C. § 301(a). Second,
13 the work involved must fall within the ‘subject matter’ of the Copyright Act as set
14 forth in 17 U.S.C. §§ 102 and 103. *Kodadek v. MTV Networks, Inc.*, 152 F.3d
15 1209, 1212 (9th Cir. 1998).

16 Wolstenholme alleges that Riot engaged in “unlawful and unfair business
17 practices by misappropriating Plaintiff’s copyrighted material for commercial
18 gain.” Dkt. 58, p. 8 ¶ 7. Other than this single sentence, Wolstenholme does not
19 allege any other conduct as the basis for his unfair competition claim under
20 California law. Because Wolstenholme’s “complaint expressly bases his unfair
21 competition claim on rights granted by the Copyright Act,” it satisfies the first
22 prong of the preemption analysis. *Kodadek*, 152 F.3d at 1213. As to the second
23 prong, Wolstenholme alleges infringement of a “literary work.” Dkt. 58, p. 5, ¶ 1.
24 Literary works fall within the scope of the Copyright Act. 17 U.S.C. § 102(a)(1).
25 “Thus, both prongs of the preemption analysis are met, and [Wolstenholme’s]
26 unfair competition claim is preempted.” *Kodadek*, 152 F.3d at 1213. Because this
27 claim fails as a matter of law, it should be dismissed with prejudice.

VIII. THE SAC FAILS TO STATE A CLAIM FOR INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS.

Wolstenholme alleges that he suffered emotional distress when Riot’s “legal representatives responded [to his initial demand in November 2021] with threats of extensive legal fees.” Dkt. 58, p. 58 ¶ 10. His claim for intentional infliction of emotional distress (“IIED”) fails for three independent reasons. First, it is barred by California’s two-year statute of limitations because the alleged conduct occurred in 2021, but Plaintiff filed this suit in late 2024. Second, the claim is barred by California’s litigation privilege because the conduct arises from pre-litigation correspondence in connection with contemplated litigation. Third, the conduct alleged—a routine legal communication—does not meet the high standard for “outrageous conduct” under California law. For these reasons, the IIED claim should be dismissed with prejudice.

A. The IIED Claim is Barred by the Two-Year Statute of Limitations.

Under California law, claims for intentional infliction of emotional distress are subject to a two-year statute of limitations. [*Cal. Civ. Proc. Code § 335.1*](#). The statute of limitations begins to run when the plaintiff suffers severe emotional distress as a result of the defendant’s allegedly outrageous conduct. [*Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 888 \(1992\)](#); [*Soliman v. CVS RX Servs., Inc.*, 570 F. App’x 710, 711–12 \(9th Cir. 2014\)](#) (affirming dismissal of IIED claim as untimely).

Here, Wolstenholme alleges that Riot’s “legal representatives threatened Plaintiff with excessive legal fees and dismissal of his claims.” Dkt. 58, ¶ 10. While Wolstenholme does not attach the correspondence at issue to his SAC, he quotes it directly as forming the basis for his claim (*see* Dkt. 58 at pp. 1155–1163) and so the Court may consider it as incorporated by reference. [*United States v. Ritchie*, 342 F.3d 903, 908 \(9th Cir. 2003\)](#); *see, e.g., Royal 4 Sys., Inc. v. RLI Ins.*

1 [Co.](#), No. CV 22-05732-RSWL-RAO, 2022 WL 19263327, at *4 (C.D. Cal. Dec. 9,
2 [2022](#)) (incorporating by reference letters that were “referenced in the Complaint”
3 and formed the basis for the plaintiff’s claims). The pre-litigation correspondence
4 to which Wolstenholme refers was sent on November 28, 2021. Geller Decl., ¶ 3,
5 Exh. A. Wolstenholme claims that this letter caused him severe emotional distress
6 and exacerbated his PTSD. Dkt. 58, ¶¶ 10–11. However, Wolstenholme did not
7 file this lawsuit until late 2024—nearly three years after the alleged conduct. *See*
8 Dkt. 11, Exh. A (original complaint filed in October 2024). Because the statute of
9 limitations expired in 2023, Wolstenholme’s IIED claim is time-barred and must
10 be dismissed with prejudice.

11 B. The IIED Claim is Barred by the Litigation Privilege.

12 The California litigation privilege provides an absolute bar to tort claims
13 arising from communications made in connection with judicial proceedings. [Cal.](#)
14 [Civ. Code § 47\(b\)](#). The privilege applies to communications “(1) made in judicial
15 or quasi-judicial proceedings; (2) by litigants or other participants authorized by
16 law; (3) to achieve the objects of the litigation; and (4) that have some connection
17 or logical relation to the action.” [Silberg v. Anderson](#), 50 Cal. 3d 205, 212 (1990).

18 The privilege applies broadly to pre-litigation communications, including
19 correspondence made in anticipation of litigation. [Blanchard v. DIRECTV, Inc.](#),
20 [123 Cal. App. 4th 903, 919 \(2004\)](#) (privilege protects letters “threatening litigation
21 and outlining legal positions”). Here, Wolstenholme challenges a letter sent by
22 Riot’s counsel that set forth Riot’s legal position and warned of the potential legal
23 consequences of pursuing frivolous claims. Geller Decl., ¶ 3, Exh. A. Because the
24 letter was sent in anticipation of litigation, it is protected under the litigation
25 privilege. To the extent that Wolstenholme alleges that the conduct of Riot’s
26 counsel *during* this litigation has caused him emotional harm (*see, e.g.*, Dkt. 58, ¶
27 13 (referring to “the endless threats to have the cases kicked out before any

1 hearing”), that conduct is protected by the litigation privilege as well. [Rusheen v.](#)
2 [Cohen](#), 37 Cal. 4th 1048, 1064 (2006) (litigation privilege protects filings made
3 “during the course of judicial proceedings”). Wolstenholme’s IIED claim,
4 therefore, is barred as a matter of law and must be dismissed with prejudice.

5 C. The Conduct Alleged is Not Sufficiently Outrageous to State a Claim
6 for IIED.

7 To state a claim for intentional infliction of emotional distress,
8 Wolstenholme must allege: “(1) extreme and outrageous conduct by the defendant
9 with the intention of causing, or reckless disregard of the probability of causing,
10 emotional distress; (2) the plaintiff’s suffering severe or extreme emotional
11 distress; and (3) actual and proximate causation of the emotional distress by the
12 defendant’s outrageous conduct.” [Plotnik v. Meihaus](#), 208 Cal. App. 4th 1590,
13 [1609 \(2012\)](#). Conduct is considered “outrageous” only if it is “so extreme as to
14 exceed all bounds of that usually tolerated in a civilized society.” [Moncada v. W.](#)
15 [Coast Quartz Corp.](#), 221 Cal. App. 4th 768, 781 (2013). Actions taken in good
16 faith to assert or defend legal rights are not actionable under California law. [Cantu](#)
17 [v. Resolution Trust Corp.](#), 4 Cal. App. 4th 857, 888 (1992).

18 Here, Wolstenholme’s IIED claim is based on a pre-litigation letter from
19 Riot’s counsel that communicated Riot’s legal position and warned Plaintiff of
20 potential liability should he proceed with a frivolous claim. Such correspondence,
21 even if it caused Wolstenholme distress, does not rise to the level of “outrageous
22 conduct” as a matter of law. Courts have consistently held that even a “callous
23 disregard” for a plaintiff’s well-being does not meet this standard—and a letter
24 factually stating the legal consequences of pursuing a frivolous claim does not
25 even approach that level. [Moncada](#), 221 Cal. App. 4th at 780. Because
26 Wolstenholme has not alleged conduct that exceeds “all bounds of that usually
27 tolerated in a civilized society,” his IIED claim fails as a matter of law.


1 **IX. CONCLUSION**

2 For the foregoing reasons, Riot respectfully requests that the Court dismiss
3 the SAC with prejudice.

4
5 DATED: April 4, 2025

MITCHELL SILBERBERG & KNUPP LLP

6
7 By:


AARON J. MOSS (SBN 190625)
JOSHUA M. GELLER (SBN 295412)
HANNAH G. SHEPHERD (SBN 347611)
Attorneys for Defendant Riot Games, Inc.

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11 **Certification Pursuant to Local Rule 11-6.2**

12 The undersigned, counsel of record for Defendant Riot Games, Inc., certifies
13 that this brief contains 6,101 words, which complies with the word limit of L.R.
14 11-6.2.

15 DATED: April 4, 2025

/s/ Aaron J. Moss
Aaron J. Moss